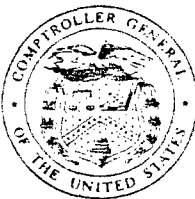


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-201228.2

DATE: June 23, 1981

MATTER OF: Singleton Contracting Corp.

DIGEST:

1. Where low bidder has refused to extend or revive bid, award to second low bidder who extended bid is proper.
2. Bidder may not be permitted to revise bid price when granting extension, since this would be tantamount to submission of new bid after bid opening contrary to competitive bidding principles.
3. Since extension of bid acceptance period has no effect on terms and conditions of bid as submitted, extension is not tantamount to submission of alternative bid.

Singleton Contracting Corp. protests the award of a contract to Thermo Contracting Corp. under invitation for bids (IFB) DTCG28-81-B-00032 issued by the U. S. Coast Guard, Department of Transportation, for the re-roofing of a building. Singleton's bid, the low responsive bid submitted, expired before the contract could be awarded. Thermo, which submitted the second low responsive bid, extended its bid. Singleton contends that the Coast Guard could have awarded a contract to it within the 60-day period for bid acceptance, but improperly failed to do so. If award within 60 days was not possible, Singleton alternatively argues, the Coast Guard should have canceled the IFB and resolicited.

The protest is denied.

Bids were opened on November 13, 1980. The contracting officer found Jones' Roofing Company to be the low bidder, but determined that its bid was nonresponsive due to its failure to furnish a bid bond. Jones filed

[Protest of Coast Guard Contract Award]
017377

a protest against the determination of nonresponsiveness with this Office on November 14.

The Coast Guard, by letter of December 22, notified all bidders of the protest and requested them to extend their 60 calendar day bid acceptance period for an additional 60 days. Thermo extended its bid while Singleton offered no response. Jones withdrew the protest on January 7, 1981. Singleton's bid expired by its terms on January 13, 1981.

At this point, the Coast Guard and Singleton materially disagree on the facts. The Coast Guard contends that in a January 15 telephone conversation with a procuring official Mr. Singleton, the firm's president, expressed reluctance to revive the bid, and that on January 19 the official was unequivocally informed that the firm would not revive the bid.

Singleton contends, however, that no discussion with procuring officials concerning revival of its bid occurred at any time subsequent to the January 13 expiration date. While Singleton does admit that at some time before that date it expressed to an agency official its reluctance to extend, it submits that it received no further communication from procuring officials until a February 6 letter in which the Coast Guard noted that Singleton's bid had expired and stated that Thermo had been awarded the contract.

In support of its contention, the Coast Guard has submitted the contracting officer's written records of the telephone conversations. Singleton, however, has submitted no evidence that the conversations did not take place, other than the assertion that Mr. Singleton was away from his office on both dates. The records submitted by the Coast Guard indicate that on January 15 Mr. Singleton was not in when the contracting officer initially called and that the conversation transpired upon Mr. Singleton's return of the contracting officer's call. It also appears from these records that Mr. Singleton may have initiated the January 19 telephone conversation. Thus, the allegation that Mr. Singleton was out of town on January 15 and 19 is not necessarily inconsistent with the Coast Guard's records and assertions, and does not in itself prove the protester's contention.

The protester has the burden of affirmatively proving its case. See Kramer Associates, Inc., B-197178, July 16, 1980, 80-2 CPD 33. Under the circumstances, we must accept the Coast Guard's assertions concerning the January 15 and 19 conversations, i.e., we must conclude that Singleton expressly refused to revive the expired bid.

Singleton's first basis for protest is that the Coast Guard actually could have awarded it a contract between Jones' January 7 withdrawal of its protest and the January 13 bid expiration date. However, the record shows that although Jones withdrew the protest in a telephone call to our Office and on the same date we sent a letter to that effect to the Department of Transportation in Washington, D.C., notice of Jones' withdrawal did not reach the contracting officer until January 21. Hence, the contracting officer was not aware that he could go forward with award until Singleton's bid had expired. While it appears the agency delayed relaying advice of Jones' withdrawal to the contracting officer, that fact does not provide a basis for overturning the award that was made and requiring a resolicitation merely because the protester had declined to revive its bid.

Singleton also questions the propriety of the award to Thermo on an extended bid. Singleton points out that the longer a bid remains open for acceptance, the greater the risk to the bidder of increases in the bidder's cost. Since a bidder's potential recovery under a contract may well depend on how long the bid is open, a bid to be open for 90 days presumably will be higher than a bid to be open for only 60 days. See Hild Floor Machine Co., Inc., B-196419, February 19, 1980, 80-1 CPD 140. On this basis, Singleton contends that the extension of a bid has the effect of an improper revision of the bid, since it essentially reduces the expected profit under the contract. Singleton argues that the Coast Guard therefore should have canceled the IFB and resolicited instead of awarding a contract based on an extended bid. Singleton alternatively contends that since the extension of a bid acceptance period subjects the bidder to the risk of cost increases in addition to those contemplated when the bid was calculated, a bidder should be allowed to revise its bid when extending in recognition of the possibility of increased costs.

We disagree. The standard IFB provision that a bid need only be open for acceptance for a specified time confers upon the bidder the right to refuse to perform a contract awarded subsequent to the expiration of the acceptance period. Guy F. Atkinson Company, et al., 55 Comp. Gen. 546 (1975), 75-2 CPD 378. Thus, its purpose is to protect bidders from precisely the type of problem described by Singleton, i.e., being required to accept an award at a price which may no longer reflect the costs to the bidder on which it was based.

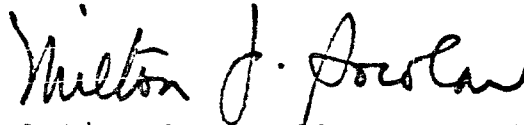
The expiration of the bid acceptance period thus deprives the Government of any right to create a contract by acceptance. Id. However, we have consistently held that the bidder may waive this right to refuse to accept an award after its bid has expired by extending the bid acceptance period, if it is willing to accept award after the original expiration date on the basis of the bid as submitted. Veterans Administration--request for advance decision, 57 Comp. Gen. 228 (1978), 78-1 CPD 59. Therefore, where award is withheld pending the resolution of a bid protest, before expiration of the bid acceptance period it is incumbent on the procuring agency, in order to avoid the cost and delay of readvertisement and the accompanying prejudice to the Government and bidders, to request bidders eligible for award to extend the time for acceptance. Federal Procurement Regulations § 1-2.407-8(b)(2) (1964 ed.).

As to Singleton's view that the extension of a bid past the period originally contemplated is tantamount to an improper revision after bid opening, we simply point out that the extension of the bid acceptance period has no effect upon the material terms and conditions of the bid, e.g., price. The fact that a bidder in the exercise of business judgment may be willing to accept less monetary recovery if awarded a contract than anticipated initially is irrelevant to the bid's acceptability as long as the cost to the Government if the bid is accepted remains the same. See 50 Comp. Gen. 383 (1970); ACCESS Corporation, B-189661, February 3, 1978, 78-1 CPD 100.

Finally, we have consistently held that a bidder may not be permitted to revise a bid price when granting an

extension, since this clearly would be tantamount to permitting the revision of a bid after opening contrary to the competitive bidding principles. 50 Comp. Gen., supra; Murphree & Lisle, Inc., B-198210, July 18, 1980, 80-2 CPD 236

The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States